

Board of Adjustment

Minutes



City Council Chambers, Lower Level
September 9, 2008

Board members Present:

Mike Clement, Chair
Dianne von Borstel, Vice Chair

Scott Thomas
Linda Sullivan
Greg Hitchens

Board members Absent:

Garret McCray (excused)
Terry Worcester (excused)

Staff Present:

Gordon Sheffield
Jeff McVay
Brandice Elliott
Kelly Arredondo

Chris Polster
Tim Rasnake
Lori Forte

Others Present:

James Carpentier
Mitchell Foy
Sean Lake
Doug Atkins

The study session began at 4:38 p.m. The Public Hearing meeting began at 5:38 p.m. Before adjournment at 6:13 p.m., the following items were considered and recorded on Board of Adjustment CD #9.

Study Session 4:42 p.m.

- A. The study session began at 4:38 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Zoning Administrator update – The Zoning Administrator reminded the Board of the Boards and Commissions Conference that will be held on Friday, December 5, 2008. The Mesa Proving Grounds Zoning Case was discussed, noting that the Community Plan emphasizes administrative processes. The Board would review comprehensive sign plans and Appeals to the Zoning Administrator's decisions related to the Community Plan. The Zoning Administrator also provided an update on the Zoning Ordinance rewrite, noting that progress is being made.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the August 12, 2008 Meeting A motion was made to approve the minutes by Boardmember von Borstel and seconded by Boardmember Sullivan. Vote: Passed 5-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Thomas. Vote: Passed 5-0
- C. Second Consent Agenda A motion to approve the second consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Sullivan. Vote: Passed 4-0-1, Thomas abstained

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Case No.: BA08-005

Location: 715 North Country Club Drive

Subject: Requesting a Development Incentive Permit (DIP) to allow development of a multiple resident complex in the R-4 zoning district.

Decision: Tabled

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to table case BA08-005.

Vote: Passed 5-0

Findings: N/A

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Case No.: BA08-043

Location: 1606 South Signal Butte Road

Subject: Requesting a modification of a Special Use Permit (SUP) for a comprehensive sign plan in conjunction with an existing commercial development in the C-2-DMP zoning district.

Decision: Approved with conditions.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Sullivan to approve case BA08-043 with the following conditions:

1. *Compliance with sign plan submitted, except as modified by the conditions listed below.*
2. *The McDonalds sign shall have a maximum sign area of twenty square feet (20 s.f.).*
3. *The new McDonalds sign shall not be placed higher than twelve feet (12') above finished floor grade.*
4. *Compliance with all requirements of the Building Safety Division in the issuance of sign permits.*

Vote: Passed 4-0-1, Thomas abstained

Findings:

- 1.1 The approved CSP (BA05-035) allows the Wal-Mart to have 10 attached signs with an aggregate sign area of approximately 630 square feet. The Wal-Mart was further approved for 12 modifier signs that were required to be placed no higher than 12-feet above finished floor grade and utilizing 12-inch or smaller letters. No provisions were made within the approved sign plan to allow attached signs for sub-tenants within the Wal-Mart.
- 1.2 McDonalds currently has an attached sign that is 16-feet above finished floor grade and approximately 20 square feet in sign area. The existing sign was attached without the benefit of a sign permit or modification of the approved CSP. The approved modification requires the 20 square foot sign to be placed no higher than twelve feet above finished floor grade.
- 1.3 The sign would be visible from off-site when placed 16-feet above finished floor grade. Wal-Mart has utilized the entire allotment of attached signage visible from off-site approved by the CSP. To be consistent with the intent of the approved CSP, the McDonalds sign could be substituted for an existing Wal-Mart sign of similar size, provided the extra Wal-Mart sign is removed. However, a sign placed at 12-feet above finished floor grade would not be visible from beyond the site boundaries.

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- 1.4** The McDonalds has been located within the Wal-Mart as a service to shoppers of the store. As a sub-tenant of Wal-Mart, visibility is important once the customer is on site. The CSP addressed on-site visibility needs by permitting 12 modifier signs. A sign that does not exceed a height of 12-feet above finished floor grade or sign area of 20 square feet would be consistent with the definition of a modifier sign in the approved CSP. The addition of one modifier sign of no greater than 20 square feet to identify a tenant would be consistent with the approved CSP.

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Case No.: BA08-044

Location: 1750 East Main Street

Subject: Requesting a Special Use Permit (SUP) to allow an electronic message display to remain static for less than one hour in the C-3 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to approve case BA08-044 with the following conditions:

1. *Compliance with sign plan submitted, except as modified by the conditions listed below.*
2. *Each message shall remain static for a minimum of fifteen (15) seconds.*
3. *The transition between messages and the intensity level of the electronic display shall be consistent with Section 11-19-8 (D) 17.*
4. *Recordation of a Sign Agreement prior to the issuance of sign permits.*
5. *Compliance with all requirements of the Building Safety Division in the issuance of sign permits.*

Vote: Passed 5-0

Findings:

- 1.1 Past decisions of the Board of Adjustment have been based on having one message visible for approximately a quarter mile as a vehicle approaches the sign. A static message for 15 seconds ensures the message is static long enough for the driver to read whatever it says quickly, in a single display, and then divert their attention back to the roadway. It also avoids distracting drivers by creating the appearance of signs being in motion.
- 1.2 The 15-second limitation that has been used on other sites will work for this sign, as well. In this case, Main Street has a speed limit of 40 miles an hour in the vicinity of this sign. With a vehicle traveling 40 miles per hour, and the sign message duration set at 15 seconds, the sign will change once for every 880 feet of travel (one second of travel equates to about 59 feet of travel at 40 mph). At once every 15 seconds, the number of messages will be limited to two during a quarter-mile (1320') approach at constant speed.
- 1.3 In the general vicinity of the proposed sign there are no other electronic message displays that will compete with the approved sign for the attention of drivers. The Main Street corridor is primarily commercial in nature and signs are commonplace and expected. Given this commercial nature, the proposed sign will not have a detrimental effect on surrounding properties. Further, the approved sign will be the only detached sign on the property and the design of the sign is a significant improvement over the existing pole sign. To ensure architectural compatibility, the sign shall receive Design Review staff approval in conjunction with the review of sign permits.

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- 1.4** The existing sign structure will be refurbished but not relocated. A masonry base will be constructed around the supporting pole to create a monument base. While the sign location is not changing, the existing sign is located within the future width line for Main Street. To ensure the cost of relocating the sign is born by the property owner and not the City in the event Main Street is widened, the owner shall record a sign agreement in conjunction with the review of sign permits.

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Case No.: BA08-045

Location: 1961 East University Drive

Subject: Requesting a Development Incentive Permit (DIP) to allow the development of a restaurant/retail building in the C-2 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to approve case BA08-045 with the following conditions:

1. *Compliance with the site and landscape plans submitted, unless modified by the conditions below.*
2. *Provision of parking space wheel stops at sixteen feet (16') in the parking spaces adjacent to the south building elevation.*
3. *Provision of a post intersection improvement landscape plan to be reviewed and approved by staff as an addendum to the case file.*
4. *Compliance with all requirements of the Design Review Board.*
5. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 5-0

Findings:

- 1.1 The approved Development Incentive Permit (DIP) allows construction of a C-2 zoned site for use as a drive-thru restaurant and retail shop. This site was previously developed with a gas station that has since been razed. The gas station has been removed, and the City has purchased the right-of-way necessary to accommodate the future improvement of this street intersection. The dedication and purchase of approximately 5,600 square feet of right-of-way through the years, most recently in 2007, has resulted in a total developable lot area of 17,352 square feet.
- 1.2 The approved deviations will allow a reduction in the building/landscape setbacks from Gilbert Road, University Drive and the south property line; a reduction in the foundation base width adjacent to the west and south building elevation; and a reduction in on-site plant requirements.
- 1.3 Consistent with the definition of "by-passed", the subject parcel is less than 2.5 acres in size and has been in the current configuration for more than 10 years, has direct access to existing utilities, and is surrounding by developed properties. A DIP is permitted for by-passed parcels that are unable to meet development standards.
- 1.4 Consistent with the requirements of a DIP, deviation to current development standards are necessary to accommodate development of this site with a viable use. The deviations that have been approved will allow development of the site in a manner consistent with development on the southeast corner, northeast corner, and to the west, particularly upon completion of the intersection improvements. The DRB members reviewed the proposal as a work session item on September 3, 2008 and were supportive of the building's architecture.

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- 1.5** Concerns related to foundation base width, on-site parking quantities, and the effect of intersection improvements have been addressed by the applicant or through conditions of approval. Sufficient justification exists for the requested DIP. The applicant has provided a high quality development that, to the greatest degree possible given the lot size, meets the intent of current development standards, while allowing the development of a reasonable size and economically viable building.

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Case No.: BA08-046

Location: 1534 North Recker Road

Subject: Requesting: 1) a Substantial Conformance Improvement Permit (SCIP) to allow the expansion of a church; and 2) a variance to allow the phasing of improvements; both in the R1-7 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to approve case BA08-046 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 5-0

Findings:

- 1.1 The approved church campus expansion will occur in two phases. Phase 1 improvements will consist of a new 33,640 square foot sanctuary building that will seat 1,600 parishioners, development of a new parking lot, and the completion of perimeter landscaping. Phase 2 improvements will consist of the redevelopment of the existing sanctuary into an 8,800 square-foot multi-purpose community center and upgrading the parking area consistent with current development (2008) standards for parking row length and landscape island frequency.
- 1.2 The approved plan includes a reduced setback from McLellan and Recker Roads. The approved site plan maintains the existing, nonconforming setback from McLellan Road. The existing setback from Recker Road will be reduced to 15-feet in the vicinity of the new sanctuary building to accommodate on-site parking, site circulation, and the placement of the new sanctuary symmetrically with existing buildings. Parking in excess of minimum Code requirements by approximately 150 spaces has been provided. Given the amount of seating (1,890), the excess parking is reasonable.
- 1.3 The applicant has provided a landscape plan that is generally consistent with, or exceeds current development standards. The landscape plan supplements existing landscape areas adjacent to McLellan Road, Recker Road, and the west property line and provides new landscape area adjacent to the south property line. The landscape plan also provides parking lot landscaping consistent with current Code. The approved plan identifies foundation base landscaping adjacent to the new sanctuary that is generally consistent current Code, with the exception of the north and west elevations where hardscape courtyards have been identified.

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- 1.4** No improvement in the conformance of existing buildings with current foundation base requirements has been provided. Such improvement would result in a significant loss in parking and/or the constriction of vehicular circulation. Future plans include the redevelopment of the existing sanctuary building to be compatible with the proposed sanctuary. Additionally, the northwestern most corner of the new sanctuary building is approximately 23 feet from the existing church building where a minimum of 25 feet is required.
- 1.5** Those areas where the site does not comply with current Code requirements are relatively minor in nature and represent an improvement over the existing condition. The approved landscape plan significantly improves the existing condition and will mitigate the reduced setbacks. The redevelopment of on-site parking will increase the amount of interior landscaping, providing additional shade and softening the large parking field.
- 1.6** The approved site improvements represent a large investment by the church and would not be financially feasible if all of the improvements were required in one phase. The requested variance will allow phasing of the improvements and will make the overall site improvements achievable. It is important to note that the first phase will include improvement to the perimeter landscaping, particularly adjacent to McLellan and Recker Roads.
- 1.7** The approved deviations allow the reinvestment in an existing site, resulting in improved building and landscape architecture. The proposal will also result in significant improvement in overall site compliance. Sufficient justification has been provided to review the requested SCIP and the approved site plan provides substantial conformance with current development standards and will be compatible with and not detrimental to the surrounding neighborhood.

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Case No.: BA08-047

Location: 2215 East Camino Circle

Subject: Requesting a variance to allow a room addition to encroach into the required side yard setback in the R1-6 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to approve case BA08-047 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions below.*
2. *Lot coverage may not exceed forty percent (40%) of the lot size.*
3. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 5-0

Findings:

- 1.1 The existing dwelling was constructed in 1971 and annexed from the County in 1972, and is legal non-conforming in that it does not comply with current Code requirements related to setbacks. While a minimum side yard of 5-feet and total side yard of 15-feet are required, the existing home has setbacks of seven-feet and five-feet. Due to the orientation of the house on the lot, the rear corner of the home encroaches into the ten-foot side yard.
- 1.2 The existing dwelling is oriented diagonally on the property, which limits opportunities for expansion of the home. The approved addition at the front of the dwelling will be a stepped pattern that aligns with the front property line, resulting in the encroachment of two areas into the side yard. One of the areas that will encroach into the setback is a closet, while the other will be a library. The home with approved additions would be comparable in size to other homes in the subdivision.
- 1.3 The lot itself is slightly irregular in that the front property line follows the curve of the street, and the rear property line is angled, resulting in a ten-foot difference in the length of side property lines. Further, lots located in the R1-6 district are required a depth of 94-feet, where this lot has only a 90-foot depth on the east side of the property. The property is also the smallest in the subdivision, with other lots ranging from 7,500 square feet to nearly 14,000 square feet in area.

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- 1.4** The approved plan identifies a three-foot encroachment into the required side yard that would result in a seven-foot setback where ten-feet would be required. Given that a portion of the original house construction currently encroaches into the required ten-foot setback, the family room addition would not further impose on adjacent properties. Further, the addition would be stepped so that only two points would encroach into the required setback, while ten-feet would be maintained elsewhere along the east property line. This design results in minimal impact to the adjacent properties and surrounding development in general.
- 1.5** The original dwelling was constructed at an angle relative to the property lines. This unfavorable location creates a hardship to updating the property, as the home cannot be expanded in any direction that would comply with current Code requirements. As the lot is the smallest in the subdivision, there are not as many opportunities to increase the floor area. In addition, the approved roof area of the home would be comparable to other homes in the subdivision.
- 1.6** The location of the home relative to the property lines, size of the dwelling, existing encroachment, and irregular lot provide sufficient justification for a variance to encroach into the side setback. The encroachment has been minimized to three-feet, which is consistent with the existing encroachment. Further, the visual impact of the encroachment will be reduced given that only two corners of the proposed addition will be in the setback.

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Case No.: BA08-048

Location: 7015 East Southern Avenue

Subject: Requesting modification of a Special Use Permit (SUP) for a Comprehensive Sign Plan for a group commercial development in the C-2-DMP zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Thomas to approve case BA08-048 with the following conditions:

1. *Compliance with sign plan submitted, except as modified by the conditions listed below.*
2. *The monument sign shall not exceed eighty (80) square feet in area.*
3. *Compliance with all requirements of the Building Safety Division in the issuance of sign permits.*

Vote: Passed 5-0

Findings:

- 1.1 The approved Special Use Permit (SUP) will allow the modification of an existing Comprehensive Sign Plan (CSP) for the Mesa Pavilions group commercial development, as approved by case BA94-001. The approved sign will allow more tenants within the existing development to be identified at the street. The approved CSP allows 8 monument signs with an aggregate height of 107-feet and an aggregate area of 652 square feet. The approved monument sign will increase the number of signs for the shopping center to 10 with an aggregate height of 88-feet, and an aggregate area of 757 square feet. While it appears that the existing number of signs, height, and area does not comply with the existing CSP, a parcel that was previously considered exempt has been included in the calculations as it has since been developed.
- 1.2 Based on current Code requirements, the development could be permitted up to 18 signs with an aggregate height of 217-feet and an aggregate area of 2170 square feet. The aggregate number of signs, height, and area that was ultimately approved with the original CSP was the same that was approved for Superstition Springs community located at the southeast corner of Power Road and Hampton Avenue, which is immediately south of Mesa Pavilions. Further, the restrictions to detached sign number, height, and area imposed by the approved CSP were intended to offset the additional attached sign area permitted for specific tenants within the development. An additional monument sign would not be out of character with either of the existing developments.
- 1.3 The approved monument sign will be 11-feet in height (measured to the top of the sign copy), and 107 square feet in area. Current Code limits the area of a monument sign to 80 square feet. However, sufficient justification does exist for individual sign area in excess of 80 square feet due to the size of the overall development. In addition, the approved monument sign will have the same sign area as existing monuments in the development, resulting in greater compatibility.

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- 1.4** Mesa Pavilions was constructed in the early 1990s, and the needs of the development have changed over time. While the approved number of monument signs was at one time appropriate for the development, it has expanded to include additional retail. Given that the identification of many inline tenants is only visible from within the development, the identification for these tenants is inadequate to draw in new patrons. An additional monument sign will ensure the viability of the development by allowing more tenants to be identified at the street.
- 1.5** Given that the number of signs and aggregate height and sign area will remain consistent with the intent of the comprehensive sign plan and current Code requirements, the proposed monument sign will be compatible with the existing development as well as surrounding properties, and will not be detrimental to adjacent development.

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Case No.: BA08-049

Location: 2145 South Edgewater Circle

Subject: Requesting a variance to allow building additions to encroach into the required side yard setbacks in the R1-6-DMP zoning district.

Decision: Approved with conditions

Summary: Lori Forte presented the request for a variance to allow an existing shed to remain in the required side setback, noting that she ensured that the structure would be compatible with the existing dwelling by adding architectural enhancements that match the home. Further, she indicated that the shed is fire-rated and is constructed on pylons. Ms. Forte presented the Board with letters of consent written by approving neighbors.

Boardmember Clement confirmed that the shed was not in the required 10-foot side yard.

Mr. McVay presented the staff report, noting the requirements for justifying a variance. He stated that there are other areas on the property to where the shed could be located; however, the shed does look nicer than most. In addition, the shed is screened from public view by the existing block wall and tree, and the neighbors are not in opposition of the request.

Boardmember Sullivan inquired as to where the shed could be placed on the property so that it would be compliant with current Code.

Boardmember Clement clarified how setbacks are measured along angled property lines.

Boardmember Hitchens indicated that there are special circumstances with this request related to the uniquely shaped lot, and confirmed that the property owner would be willing to reduce the size of the shed. Mr. McVay indicated that complications could arise by cutting into the pylons.

Mr. Sheffield stated that the shed, if approved, should maintain a setback of three-feet, and it should be made clear that variances for future projects on the property would not be granted.

Boardmember Thomas felt that the integrity of the structure could be compromised if it was reduced, and noted that the lot appeared to be smaller than adjacent properties.

Boardmember von Borstel confirmed that a building permit and inspection would be required to allow the shed to remain in its current location. Mr. McVay added that since this is a Code Compliance case, a time frame would be provided to allow the property owner sufficient time to secure the necessary permits. The Board instructed staff to allow 90 days as a reasonable time to bring the shed into conformance with the conditions of the variance.

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Motion: It was moved by Boardmember Sullivan, seconded by Boardmember Thomas to approve case BA08-048 with the following conditions:

1. *Compliance with site plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 5-0

Findings:

- 1.1 The approved variance will allow the construction of a 144 square foot storage shed within the side yard setback of the subject parcel. The approved storage shed encroaches three feet into the required five-foot side yard setback. When encroaching into the side yard setback only, Code permits detached accessory buildings with a maximum height of eight feet and maximum size of 150 square feet. To be considered a detached accessory building, a minimum six-foot separation is required from the house. As proposed, the storage shed is attached to the house and thus, by definition, the house is encroaching into the setback.
- 1.2 The subject site is Lot 49 of Superstition Springs Parcel 27 subdivision. This subdivision requires five- and ten-foot side yard setbacks. The approved site plan includes the general location of future improvements to the site. These improvements may be permitted provided a minimum 10-foot side yard setback is maintained from the future 3rd garage addition and that the roof area of the primary structure, future additions, and detached structures does not exceed 40 percent lot coverage (approx. 3,865 square feet).
- 1.3 While the subject parcel exceeds the minimum required size for lots in the R1-6 zoning district, the property has a unique shape that creates pockets of unusable space. In addition, the size of the property is somewhat smaller than surrounding lots, which poses a unique condition. The architecture of the shed is compatible with the primary dwelling, and is not visible from the right-of-way as it is screened by a block wall and a mature tree. In addition, relocation of the shed in conformance with setback requirements would affect mature trees and future development plans on the property.
- 1.4 The unique shape of the property and smaller lot size create hardships that provide sufficient justification for a variance to encroach into the side setback. The visual impact of the shed will be reduced due to the existing block wall and mature landscaping, and will be compatible with the existing dwelling. As a result, the proposed shed will be compatible with, and not detrimental to, surrounding development and the neighborhood in general.

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Respectfully submitted,

Jeffrey McVay, AICP
Senior Planner
Secretary, Board of Adjustment

Minutes written by Brandice Elliott, Planner I

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